

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
D. Leeming)	Group Art Unit: 3641
)	
Serial No.: 10/584,605)	Examiner: S. Abdosh
)	
Filed: August 9, 2007)	
)	
For: TEXTILE ARMOUR)	

October 6, 2010

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

A. Introduction

This paper is submitted in response to the Office Action mailed July 20, 2010 in connection with the above-identified application. A Notice of Appeal is submitted herewith. Because Applicant believes the Examiner's final rejection of at least independent claim 30 lacks merit, he requests review of the Office Action prior to his submitting an appeal brief.

B. The Rejection

Independent claim 30 of the application relates to a method for protecting an object against a rocket propelled grenade ("RPG") comprising:

- providing *a net formed from interconnecting net strands of plastic fibres* and defining a net mesh *configured such that a rocket propelled grenade will be disabled by deformation of a nose cone* of the rocket propelled grenade when the nose cone enters one of the sections of net mesh; and

- disposing the net between the object and the rocket propelled grenade.

According to the Examiner, completing these actions would have been obvious over combined disclosures of U.S. Patent Application Publication Nos. 2009/0266226 of Beach and 2006/0169832 of Glasson. Applicant disagrees.

1. Turning the Exploding Net of the Beach Publication Into a (Passive) Net of Plastic Fibres Would Not Have Been Obvious to One of Ordinary Skill in the Art.

Disclosed in the Beach publication are nets 2 and 1206. Identified as “explosive” and “detonation” nets, each net comprises multiple “individual **explosive** elements.” See Beach, p. 4, ¶¶ 0071, 0075-0076, and 0088 (“explosive net 2”; “Primacord elements 2a, 2b and 2c”; “[e]xplosive elements 2a, 2b and 2c”; “detonation net 1206 fabricated with primacord”). When an incoming RPG engages the net, the net **explodes** to create “explosive overpressure” so as to short internal electronic circuitry of the RPG. See id., ¶ 0071.

By contrast, *Applicant’s invention employs a passive net of plastic fibres to deform, and thereby disable, a nose cone of an RPG.* Accordingly, unlike the systems of the Beach publication, *no dangerously explosive elements need be used* to form the net of Applicant’s invention. This avoidance of explosive net elements by Applicant’s invention may be especially advantageous when protection of human personnel is desired, as the Beach publication contemplates placing the explosive elements of its net as close as **five inches** from a personnel vehicle. See id., ¶ 0055. Applicant’s avoidance of explosive net elements additionally makes the net

both cheaper to manufacture and more reliable, as no reliance on sensors and computational equipment is required.

Moreover, contrary to the Examiner's contention, *no suggestion whatsoever* exists to modify the nets of the Beach publication to omit the explosive elements and substitute plastic fibres instead. Indeed, omitting the explosive elements would *destroy* the functionality of those nets, as *only their act of exploding* accomplishes the objective of disabling the RPG (whether by explosively "crushing," "penetrat[ing]," or "shearing" ogive 3b). See id., ¶ 0071. Switching to the Kevlar fibres of the Glasson publication (or to any other plastic fibres), therefore, would be wholly contrary to the teachings of the Beach publication and thus not obvious to one skilled in the appropriate art. For at least these reasons, therefore, Applicant requests that the pending claims be allowed.

2. The Glasson Publication is Not Reasonably Pertinent to Any Problem Sought to be Resolved by Applicant.

Although the above reasoning is more than adequate to support allowance of the pending claims, yet additional bases exist for allowing, *e.g.*, independent claim 30. According to the Examiner, one skilled in the art would have looked to the Glasson publication for disclosure of plastic fibres to deform nose cones of RPGs. See Office Action at p. 3. The Examiner so contends notwithstanding that the system of the Glasson publication is directed to an inflatable "parachute" that, like the net of the Beach publication, also may contain *explosive* elements to disable threat munitions. See Glasson, p. 1, ¶ 0012; p. 2, ¶ 0016. The mesh material of the "parachute" is *not itself* identified as *deforming* any nose cone of an RPG; indeed, the

sole mesh sizing requirements are that the mesh “present[] a physical barrier to oncoming munitions” and “allow[] most air to pass through.” See id., p. 1, ¶ 0012.

The U.S. Court of the Appeals for the Federal Circuit has repeatedly chided examiners for engaging in the sort of conduct presented in the Office Action. As stated by that court:

In order to rely on a reference as a basis for rejection of the applicant’s invention, the reference must either be in the field of the applicant’s endeavor or, if not, then be ***reasonably pertinent to the particular problem with which the inventor was concerned.*** . . . We have reminded ourselves and the PTO that it is necessary to consider “the reality of the circumstances”--in other words, common sense--in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor.

In re Oetiker, 977 F.2d 1443, 1447 (Fed. Cir. 1992) (emphasis added). Common sense dictates that a designer of non-explosive nets for nose cone deformation would ***not*** look to systems such as that of the Glasson publication--which both ***contemplates explosive elements*** and ***fails to contemplate deformation due to net configuration.*** For the Examiner to declare otherwise is inconsistent with “the reality of the circumstances,” precisely the conduct deemed impermissible in Oetiker.

3. Insufficient Reasoning is Articulated to Support the Examiner’s (Apparent) Resolution of the Graham Factual Inquiries.

As noted above, the Examiner contends it would have been obvious to substitute Kevlar fibres for the explosive elements of the net of the Beach publication (seemingly to make the net of “high-strength material”). See Office Action at p. 3. The Examiner’s contention suggests he has resolved the *Graham* factual inquiries necessary to support an obviousness rejection under 35 U.S.C. § 103(a). ***Nowhere***,

however, does the Examiner comply with the mandate of M.P.E.P. § 2143(B), which *requires* examiners to *articulate* findings that:

(A) the prior art contained a device . . . which differed from the claimed device by the substitution of some components . . . with other components;

(B) the substituted components *and their functions* were known in the art; and

(C) one of ordinary skill in the art could have substituted one known element for another, and *the results of the substitution would have been predictable*.

In particular, although the Examiner alleges that nets constructed of plastic fibres were known and that plastic fibres could be substituted for the explosive elements of the nets of the Beach publication, *at no point* in the Office Action does the Examiner prove that the prior art contemplated using plastic fibre nets for the claimed *function* of deforming a nose cone of an RPG. Consequently, finding (B) above is not made. Moreover, even assuming (but not conceding, as argued above) that one of ordinary skill in the art could have substituted the Kevlar fibres of the Glasson publication for the explosive elements of the Beach publication, the Examiner has provided *no proof whatsoever* that the substitution would have produced *predictable* results--as required for finding (C) above to be made. Applicant asserts, further, that such a substitution, if made, would *not* have produced predictable results, precluding finding (C) from ever being made. For at least these additional reasons, Applicant requests that the pending claims be allowed.

Respectfully submitted,



Dean W. Russell
Reg. No. 33,452